

Commercial Financial Services Brief: June 2011

June 10, 2011

If a state budget has not been passed by 11:59 p.m. on June 30, 2011, there will be a shutdown of most state government functions. Although there was a partial state government shutdown in 2005, the Office of the Secretary of State's budget had already been passed, so it did not shut down. To date there has never been a shut down of the Office of the Secretary of State. This year, unfortunately, that may come to pass.

It has not yet been determined whether the business services provided by the Office of the Secretary of State and the Department of Vehicle Services will be excepted from the shutdown. And, it is not possible to speculate about how long any shutdown will continue. In an abundance of caution, we suggest planning for a shutdown of indefinite duration.

Remember, the UCC does not contain government closure exceptions to its perfection rules.

As a result, out of an abundance of caution, we would suggest the following:

1. If financing transactions are scheduled to close after June 30, obtain authorization from your borrowers and third party grantors to pre-file financing statements pursuant to Minn. Stat. § 336.9-502(d) and file your financing statements **NOW**. This will enable a financing transaction to close and obtain a perfected security interest even though the filing office is closed.
2. If you are financing motor vehicles, close all pending transactions as soon as possible and perfect your security interests in your collateral **NOW**. The Department of Vehicle Services may not be operating during a shutdown. As a result, you will not be able to perfect a security interest in a titled vehicle. And pre-filing is not available for motor vehicles. If you close such a transaction during a shutdown, obtain all necessary documents from your borrower or debtor and retain them in your files until such services are available. While you will not be perfected in the interim, you will be able to move quickly to perfect your security interest when government services resume.
3. If your institution has financing statements of record which will lapse prior to December 10, 2011, file your continuation statements **NOW**. If your financing statement lapses during the shutdown, you will not be able to file a continuation statement. This could expose your security interest to a loss of priority, avoidance by a bankruptcy trustee, or a preference attack by a bankruptcy trustee.
4. If you are underwriting a transaction, regardless of the current status of the credit approval, do your UCC searches **NOW**. No searches will be available from the Secretary of State's office during the shutdown, including online searches conducted by your institution.



Finally, we would suggest you not wait until June 30 to make any required filings or conduct any searches. We anticipate the online central filing system will be swamped on that date as lenders realize the critical nature of the shutdown. And the desk in the St. Paul office will likely be extremely busy on that date.

If you have any questions concerning any of these issues, feel free to contact us at Gray Plant Mooty.

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